

107TH CONGRESS  
2D SESSION

# H. R. 3818

To protect investors by enhancing regulation of public auditors, improving corporate governance, overhauling corporate disclosure made pursuant to the securities laws, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2002

Mr. LaFALCE (for himself, Mr. GEPHARDT, Ms. PELOSI, Ms. DeLAURO, Mr. CONYERS, Mr. WAXMAN, Mr. FRANK, Mr. KANJORSKI, Mrs. MALONEY of New York, Mr. GUTIERREZ, Ms. CARSON of Indiana, Mr. MEEKS of New York, Ms. SCHAKOWSKY, Mr. GONZALEZ, Mrs. JONES of Ohio, Mr. CLAY, Mr. FORD, Mr. ISRAEL, Mr. HINCHEY, Ms. SLAUGHTER, Mr. LIPINSKI, and Mr. STUPAK) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To protect investors by enhancing regulation of public auditors, improving corporate governance, overhauling corporate disclosure made pursuant to the securities laws, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Comprehensive Investor Protection Act of 2002”.

6       (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Auditor independence.
- Sec. 3. Improper influence on conduct of audits.
- Sec. 4. Public Accounting Regulatory Board.
- Sec. 5. Study on the improvement of corporate governance.
- Sec. 6. Insider trades during pension fund blackout periods prohibited.
- Sec. 7. Improvements in financial reporting.
- Sec. 8. Creation of current disclosure reporting system.
- Sec. 9. Enhanced oversight of periodic disclosures by issuers.
- Sec. 10. Reauthorization of appropriations of the Securities and Exchange Commission.
- Sec. 11. Electronic disclosure of affiliate transactions.
- Sec. 12. Restoration of joint and several liability.
- Sec. 13. Credit rating agencies.
- Sec. 14. Restoration of aiding and abetting liability.
- Sec. 15. Destruction of records.
- Sec. 16. Analyst conflicts of interest.
- Sec. 17. Definition of securities laws.

**1 SEC. 2. AUDITOR INDEPENDENCE.**

2 (a) AUDITOR INDEPENDENCE REQUIREMENTS.—The  
 3 Securities Exchange Act of 1934 is amended by inserting  
 4 after section 10A (15 U.S.C. 78j–1) the following new sec-  
 5 tion:

**6 “SEC. 10B. AUDITOR INDEPENDENCE.**

7 “(a) PERMITTED SERVICES FOR AUDIT CLIENTS.—

8 “(1) NONAUDIT SERVICES FOR AUDIT CLIENTS  
 9 PROHIBITED.—

10 “(A) PROHIBITION.—An accountant shall  
 11 not be considered to be independent for pur-  
 12 poses of certifying the financial statements or  
 13 other documents of an issuer required to be  
 14 filed with the Commission under the securities  
 15 laws for any fiscal year of the issuer if the ac-  
 16 countant performs prohibited nonaudit services

1 for such issuer or an affiliate of such issuer  
2 during such fiscal year.

3 “(B) PERIODIC REVIEW OF PROHIBITED  
4 NONAUDIT SERVICES.—The Commission shall  
5 periodically review the impact on the independ-  
6 ence of auditors of the scope of services pro-  
7 vided by auditors to audit clients in order to de-  
8 termine whether additional services should be  
9 added to the list of prohibited nonaudit services  
10 under subsection (e)(11). In conducting such  
11 periodic reviews, the Commission shall consider  
12 the impact of the provision of a service on an  
13 auditor’s independence where provision of the  
14 service—

15 “(i) creates a mutual or conflicting in-  
16 terest with the audit client;

17 “(ii) results in the accounting firm  
18 auditing its own work;

19 “(iii) results in an accountant or ac-  
20 counting firm functioning as management  
21 or an employee of the audit client; or

22 “(iv) results in the accounting firm  
23 acting as an advocate for the audit client.

24 “(C) TRANSITION.—Until one year after  
25 the date of enactment of this section, providing

1 prohibited nonaudit services to an audit client  
2 or an affiliate of an audit client will not impair  
3 an accountant's independence with respect to  
4 the audit client if—

5 “(i) the prohibited nonaudit services  
6 are performed pursuant to a written con-  
7 tract in effect on or before such date of en-  
8 actment; and

9 “(ii) performing those services did not  
10 impair the auditor's independence under  
11 requirements of the Commission, the Inde-  
12 pendence Standards Board, or the account-  
13 ing profession in the United States in ef-  
14 fect on such date of enactment.

15 “(2) AUDIT COMMITTEE APPROVAL OF TAX-RE-  
16 LATED AND NONAUDIT SERVICES.—An accountant  
17 shall not be considered to be independent for pur-  
18 poses of certifying the financial statements or other  
19 documents of an issuer required to be filed with the  
20 Commission under the securities laws for any fiscal  
21 year of the issuer if, during such fiscal year, the ac-  
22 countant provides any tax-related or nonaudit serv-  
23 ices that are not otherwise prohibited under this sec-  
24 tion, unless the provision of such tax-related or  
25 nonaudit services was approved in advance by the

1       audit committee or, in the absence of an audit com-  
2       mittee, the equivalent board committee or the entire  
3       board of directors. In approving such services, the  
4       audit committee shall evaluate the impact of the pro-  
5       vision of such services on the independence of the  
6       auditor.

7       “(b) AUDITOR ROTATION.—

8               “(1) GENERAL RULE.—Except as otherwise  
9       provided in this subsection, an accountant shall not  
10      be considered to be independent for purposes of cer-  
11      tifying the financial statements or other documents  
12      of an issuer required to be filed with the Commis-  
13      sion under the securities laws if the accountant has  
14      been engaged to conduct an audit of such statements  
15      for more than 4 consecutive fiscal years of such  
16      issuer.

17              “(2) 4-YEAR EXTENSION.—The accountant of  
18      the issuer may, notwithstanding paragraph (1), be  
19      engaged to conduct an audit for 4 additional con-  
20      secutive fiscal years if the Public Auditing Regu-  
21      latory Board finds pursuant to section 13A(f)(4)  
22      that the accountant may be considered to be inde-  
23      pendent notwithstanding the extension of the en-  
24      gagement by the issuer on the basis of a satisfactory  
25      review by the Board of the accountant’s audit with

1       respect to such issuer during the preceding engage-  
2       ment under paragraph (1).

3               “(3) AUDIT PARTNER ROTATION.—Any ac-  
4       countant that receives an extension of an engage-  
5       ment under paragraph (2) shall not designate the  
6       partner or officer who supervised or managed the  
7       audit during the initial period under paragraph (1)  
8       to supervise or manage the audit during any such  
9       extension, unless that partner or officer has super-  
10      vised or managed the audit for 2 years or less dur-  
11      ing that initial period. In no event shall a partner  
12      or officer supervise or manage an audit of an issuer  
13      for more than 4 consecutive years.

14              “(4) TREATMENT OF AUDIT ENGAGEMENTS  
15      PRIOR TO ENACTMENT.—No fiscal year of an issuer  
16      that began before the date of enactment of this sec-  
17      tion shall be counted towards the 4 consecutive fiscal  
18      year limitation contained in paragraph (1).

19              “(c) AUDITOR/ISSUER EMPLOYMENT RESTRIC-  
20      TIONS.—Beginning on the date that is two years after the  
21      date of enactment of this section, an accountant shall not  
22      be considered to be independent for the purposes of certi-  
23      fying the financial statement or other documents of an  
24      issuer required to be filed with the Commission under the  
25      securities laws if—

1           “(1) the issuer employs any person who was  
2           employed by the accountant and was assigned by  
3           such accountant or firm to participate in the audit  
4           of the financial statements of such issuer; or

5           “(2) the issuer employs any person as a chief  
6           executive officer, chief financial officer, controller,  
7           principal accounting officer, or equivalent position;  
8           during the two years following the date on which such per-  
9           son ceased to be employed by such accountant.

10          “(d) EXEMPTIONS.—The Commission may, by rule,  
11          exempt from the requirements of this section audits of  
12          issuers that are small companies and accountants that are  
13          small audit firms, to the extent consistent with the public  
14          interest.

15          “(e) DEFINITION OF PROHIBITED NONAUDIT SERV-  
16          ICES.—For purposes of this section, the term ‘prohibited  
17          nonaudit services’ includes the following:

18                 “(1) BOOKKEEPING OR OTHER SERVICES RE-  
19                 LATED TO THE AUDIT CLIENT’S ACCOUNTING  
20                 RECORDS OR FINANCIAL STATEMENTS.—Any service  
21                 involving:

22                         “(A) maintaining or preparing the audit  
23                         client’s or an affiliate of the audit client’s ac-  
24                         counting records;

1           “(B) preparing the audit client’s or an af-  
2           filiate of the audit client’s financial statements;  
3           or

4           “(C) generating financial information to be  
5           disclosed by the audit client or an affiliate of  
6           the audit client to the public.

7           “(2) FINANCIAL INFORMATION SYSTEMS DE-  
8           SIGN AND IMPLEMENTATION.—Designing or imple-  
9           menting a hardware or software system used to gen-  
10          erate information that is significant to the audit cli-  
11          ent’s financial statements taken as a whole, not in-  
12          cluding services an accountant performs in connec-  
13          tion with the assessment, design, and implementa-  
14          tion of internal accounting controls and risk man-  
15          agement controls.

16          “(3) APPRAISAL OR VALUATION SERVICES,  
17          FAIRNESS OPINIONS, OR CONTRIBUTION-IN-KIND RE-  
18          PORTS.—Any appraisal or valuation service for an  
19          audit client or an affiliate of an audit client, or any  
20          service involving a fairness opinion or contribution-  
21          in-kind report where it is reasonably likely that, in  
22          performing an audit in accordance with generally ac-  
23          cepted auditing standards, the results will be audited  
24          by the accountant.



1           “(4) ACTUARIAL SERVICES.—Any advisory serv-  
2           ice involving the determination of policy reserves and  
3           related accounts for the audit client or an affiliate  
4           of an audit client, unless the audit client or its affil-  
5           iate uses its own actuaries or third-party actuaries  
6           to provide management with the primary actuarial  
7           capabilities.

8           “(5) INTERNAL AUDIT OUTSOURCING.—Internal  
9           audit services for an audit client or an affiliate of an  
10          audit client, not including nonrecurring evaluations  
11          of discrete items or programs and operational inter-  
12          nal audits unrelated to the internal accounting con-  
13          trols, financial systems, or financial statements.

14          “(6) MANAGEMENT FUNCTIONS.—Acting, tem-  
15          porarily or permanently, as a director, officer, or  
16          employee of an audit client or an affiliate of an  
17          audit client, or performing any decision-making, su-  
18          pervisory, or ongoing monitoring function for the  
19          audit client or affiliate of the audit client.

20          “(7) HUMAN RESOURCES.—Recruiting, hiring,  
21          or designing compensation packages for officers, di-  
22          rectors, or managers of the audit client or an affil-  
23          iate of the audit client; advising about the audit cli-  
24          ent’s or affiliate of the audit client’s management or  
25          organizational structure; developing employee eval-

1 uation programs; or conducting psychological or  
2 other formal testing of employees.

3 “(8) BROKER-DEALER, INVESTMENT ADVISER,  
4 OR INVESTMENT BANKING SERVICES.—Acting as a  
5 securities professional, such as a broker-dealer, pro-  
6 moter, underwriter, analyst of the audit client’s or  
7 an affiliate of the audit client’s securities, invest-  
8 ment adviser, or in any capacity recommending the  
9 purchase or sale of an audit client’s or an affiliate  
10 of an audit client’s securities, or designing the audit  
11 client or an affiliate of the audit client’s system to  
12 comply with broker-dealer or investment adviser reg-  
13 ulations.

14 “(9) LEGAL SERVICES.—Providing any service  
15 to an audit client or an affiliate of an audit client  
16 that, in the jurisdiction in which the service is pro-  
17 vided, could be provided only by someone licensed to  
18 practice law.

19 “(10) EXPERT SERVICES.—Rendering or sup-  
20 porting expert opinions for an audit client or an af-  
21 filiate of an audit client in legal, administrative, or  
22 regulatory filings or proceedings.

23 “(11) ADDITIONS BY RULE.—Any other service  
24 that the Commission identifies by rule, consistent

1 with the protection of investors and the public inter-  
2 est, to be a nonaudit service.”.

3 (b) NATIONAL SECURITIES EXCHANGE ENFORCE-  
4 MENT OF AUDIT COMMITTEE GOVERNANCE PRAC-  
5 TICES.—Section 6(b) of the Securities Exchange Act of  
6 1934 (15 U.S.C. 78f(b)) is amended by adding at the end  
7 the following new paragraph:

8 “(10) The qualitative listing standards con-  
9 cerning corporate governance of the exchange re-  
10 quire that—

11 “(A) an issuer’s auditor is appointed by  
12 and reports directly to the audit committee of  
13 the board of directors or, in the absence of an  
14 audit committee, the board committee per-  
15 forming equivalent functions or the entire board  
16 of directors;

17 “(B) the audit committee meet with the  
18 accountants engaged to perform such audit on  
19 a regular basis, at least quarterly;

20 “(C) the audit committee provides the op-  
21 portunity to meet without the attendance at  
22 such meetings of any officer, director, or other  
23 member of the issuer’s senior management;

24 “(D) no director of an issuer may provide  
25 consulting or expert services to the board of di-

1           rectors of the issuer or to the issuer if such di-  
2           rector receives compensation for such services;  
3           and

4           “(E) the issuer shall not provide charitable  
5           or other contributions to any group affiliated  
6           with any director while such director is serving  
7           on the board of directors of the issuer.”.

8           (c) STUDY OF ADDITIONAL INDEPENDENCE RE-  
9           QUIREMENTS.—

10           (1) STUDY REQUIRED.—The Securities and Ex-  
11           change Commission shall conduct a study of the effi-  
12           cacy of imposing additional independence restrictions  
13           relating to the provision of tax-related services by an  
14           accountant or an affiliate of an accountant. In par-  
15           ticular, the Commission shall study the effect on  
16           independence of providing tax advisory work relating  
17           to the treatment of tax-advantaged structures, secu-  
18           rities, or other arrangements which are substantially  
19           designed by the auditor or an affiliate of an auditor.  
20           The Commission shall also study the effect on, or  
21           the impairment of, an accountant’s independence re-  
22           lating to tax advice provided to an audit client by its  
23           auditor to determine the tax or accounting treat-  
24           ment of a proposed structure, security, or account-

1       ing item that the auditor did not provide substantial  
2       assistance in designing.

3           (2) REPORT REQUIRED.—The Commission  
4       shall submit a report on the analysis required under  
5       paragraph (1) to the Committee on Financial Serv-  
6       ices of the House of Representatives and the Com-  
7       mittee on Banking, Housing, and Urban Affairs of  
8       the Senate no later than 180 days after the date of  
9       enactment of this Act.

10 **SEC. 3. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.**

11       Section 9 of the Securities Exchange Act of 1934 (15  
12 U.S.C. 78i) is amended by adding at the end the following  
13 new subsection:

14       “(j) IMPROPER INFLUENCE ON CONDUCT OF AU-  
15 DITS.—It shall be unlawful in contravention of such rules  
16 and regulations as the Commission shall prescribe as nec-  
17 essary and appropriate in the public interest or for the  
18 protection of investors for any officer, director, or affili-  
19 ated person of an issuer to take any action to unduly or  
20 improperly influence, coerce, manipulate, or mislead any  
21 independent public or certified accountant engaged in the  
22 performance of an audit of the financial statements of  
23 such issuer.”.

1 **SEC. 4. PUBLIC ACCOUNTING REGULATORY BOARD.**

2 The Securities Exchange Act of 1934 is amended by  
3 inserting immediately after section 13 (15 U.S.C. 78m)  
4 the following new section:

5 **“SEC. 13A. PUBLIC ACCOUNTING REGULATORY BOARD.**

6 “(a) DEFINITIONS.—For purposes of this section, the  
7 following definitions shall apply:

8 “(1) PUBLIC ACCOUNTING FIRM.—The term  
9 ‘public accounting firm’ means a sole proprietorship,  
10 unincorporated association, partnership, corporation,  
11 or other legal entity that is engaged in the practice  
12 of public accounting.

13 “(2) BOARD.—The term ‘Board’ means the  
14 Public Accounting Regulatory Board established by  
15 the Commission pursuant to subsection (b).

16 “(3) ACCOUNTANT’S REPORT.—The term ‘ac-  
17 countant’s report’ means a document in which a  
18 public accounting firm identifies a financial state-  
19 ment, report, or other document and sets forth the  
20 firm’s opinion regarding such financial statement,  
21 report, or other document, or an assertion that an  
22 opinion cannot be expressed.

23 “(4) PERSON ASSOCIATED WITH A PUBLIC AC-  
24 COUNTING FIRM.—The term ‘person associated with  
25 a public accounting firm’ means a natural person  
26 who—

1           “(A) is a partner, shareholder, employee,  
2           or individual proprietor of a public accounting  
3           firm, or who shares in the profits of a public  
4           accounting firm; and

5           “(B) engages in any conduct or practice in  
6           connection with the preparation of an account-  
7           ant’s report on any financial statement, report,  
8           or other document required to be filed with the  
9           Commission under any securities law.

10          “(5) PROFESSIONAL STANDARDS.—The term  
11          ‘professional standards’ means generally accepted  
12          auditing standards, generally accepted accounting  
13          principles, generally accepted standards for attesta-  
14          tion engagements, and any other standards related  
15          to the preparation of financial statements or ac-  
16          countant’s reports promulgated by the Commission  
17          or a standard-setting body recognized by the Board.

18          “(b) ESTABLISHMENT OF BOARD.—Not later than  
19          90 days after the date of enactment of this section, the  
20          Commission shall establish a Public Accounting Regu-  
21          latory Board to perform the duties set forth in this sec-  
22          tion.

23          “(c) MEMBERSHIP OF BOARD.—

24                 “(1) CHAIRMAN.—The Chairman of the Board  
25                 shall be appointed jointly by the Commission and the

1 Comptroller General of the United States for a term  
2 of five years.

3 “(2) APPOINTMENT OF BOARD MEMBERS.—

4 There shall be 6 additional Board members, who  
5 shall be selected by an Appointment Committee com-  
6 prised of the Chairman of the Board, the Chairman  
7 of the Commission, and the Comptroller General of  
8 the United States. Board members shall serve as  
9 representatives of institutional investors and pension  
10 funds.

11 “(3) ACCOUNTANT MEMBERS.—Two of the  
12 members may be present or former certified public  
13 accountants, provided such members—

14 “(A) are not currently in public practices;

15 “(B) have not been associated with a pub-  
16 lic accounting firm for a period of at least 3  
17 years; and

18 “(C) agree to not be associated with or to  
19 receive consulting fees from a public accounting  
20 firm for a period of five years after leaving the  
21 Board.

22 “(4) NOMINATIONS.—In making appointments  
23 of members, the Appointment Committee shall con-  
24 sult with, and make appointments from nominations  
25 received from—



1 “(A) institutional investors;

2 “(B) public employee pension plans;

3 “(C) pension plans organized pursuant to  
4 the Employee Retirement Income Security Act  
5 of 1974; and

6 “(D) pension plans organized pursuant to  
7 the Taft-Hartley Act.

8 “(5) TERMS.—The members of the Board ap-  
9 pointed by the Appointment Committee shall have  
10 terms of 4 years, except that the members of the  
11 Appointing Committee shall adopt procedures for  
12 staggering the initial terms of the members first so  
13 appointed to provide for a reasonable overlapping of  
14 the terms of office of subsequently elected members.

15 “(6) FULL-TIME BASIS.—The members of the  
16 Board shall serve on a full-time basis, severing all  
17 business ties with former firms or employers prior to  
18 beginning service on the Board.

19 “(7) RULES.—Following selection of the initial  
20 members of the Board, the Board shall propose and  
21 adopt rules, which shall provide for—

22 “(A) the operation and administration of  
23 the Board, including the compensation of the  
24 members of the Board, which shall be at a level

1 comparable to similar, professional positions in  
2 the private sector;

3 “(B) the appointment and compensation of  
4 such employees, attorneys, and consultants as  
5 may be necessary or appropriate to carry out  
6 the Board’s functions under this title;

7 “(C) the registration of public accounting  
8 firms with the Board pursuant to subsections  
9 (d) and (e); and

10 “(D) the matters described in subsections  
11 (f) and (g).

12 “(8) ADMINISTRATIVE PROCEDURES ACT APPLI-  
13 CABILITY.—Chapter 5 of title 5, United States  
14 Code, shall apply to the proceedings of the Board,  
15 including proceedings to prescribe or amend rules of  
16 the Board.

17 “(d) FUNDING OF THE BOARD.—

18 “(1) SELF-FINANCING.—The Board shall estab-  
19 lish rules for the assessment and collection of fees  
20 sufficient to recover the costs and expenses of the  
21 Board and to permit the Board to operate on a self-  
22 financing basis.

23 “(2) ASSESSMENT AND COLLECTION.—The fees  
24 shall be assessed on issuers that file any financial  
25 statements, reports, or other documents with the

1 Commission under the securities laws that must be  
2 certified by a public accounting firm. The fees shall  
3 be collected through the public accounting firm that  
4 certifies such statement, report, or document.

5 “(3) PAYMENT A CONDITION OF REGISTRA-  
6 TION.—The Board shall terminate or suspend the  
7 registration under subsection (e) of any public ac-  
8 counting firm that fails to collect and transmit a fee  
9 assessed under this subsection.

10 “(e) REGISTRATION WITH BOARD.—

11 “(1) REGISTRATION REQUIRED.—Beginning 1  
12 year after the date on which all initial members of  
13 the Board have been selected in accordance with  
14 subsection (c), it shall be unlawful for a public ac-  
15 counting firm to furnish an accountant’s report on  
16 any financial statement, report, or other document  
17 required to be filed with the Commission under any  
18 Federal securities law, unless such firm is registered  
19 with the Board.

20 “(2) APPLICATION FOR REGISTRATION.—A  
21 public accounting firm may be registered under this  
22 subsection by filing with the Board an application  
23 for registration in such form and containing such in-  
24 formation as the Board, by rule, may prescribe.  
25 Each application shall include—

1           “(A) the names of all clients of the public  
2           accounting firm for which the firm furnishes ac-  
3           countant’s reports on financial statements, re-  
4           ports, or other documents filed with the Com-  
5           mission;

6           “(B) financial information of the public ac-  
7           counting firm for its most recent fiscal year, in-  
8           cluding its annual revenues from accounting  
9           and auditing services, its assets and its liabil-  
10          ities;

11          “(C) a statement of the public accounting  
12          firm’s policies and procedures with respect to  
13          quality control of its accounting and auditing  
14          practice;

15          “(D) information relating to criminal, civil,  
16          or administrative actions or formal disciplinary  
17          proceedings pending against such firm, or any  
18          person associated with such firm, in connection  
19          with an accountant’s report furnished by such  
20          firm;

21          “(E) a list of persons associated with the  
22          public accounting firm who are certified public  
23          accountants, including any State professional li-  
24          cense or certification number for each such per-  
25          son; and

1           “(F) such other information that is reason-  
2           ably related to the Board’s responsibilities as  
3           the Board considers necessary or appropriate.

4           “(3) PERIODIC REPORTS.—Once in each year,  
5           or more frequently as the Board, by rule, may pre-  
6           scribe, each public accounting firm registered with  
7           the Board shall submit reports to the Board updat-  
8           ing the information contained in its application for  
9           registration and containing such additional informa-  
10          tion that is reasonably related to the Board’s re-  
11          sponsibilities as the Board, by rule, may prescribe.

12          “(4) EXEMPTIONS.—The Commission, by rule  
13          or order, upon its own motion or upon application,  
14          may conditionally or unconditionally exempt any  
15          public accounting firm or any accountant’s report,  
16          or any class of public accounting firms or any class  
17          of accountant’s reports, from any provisions of this  
18          section or the rules or regulations issued hereunder,  
19          if the Commission finds that such exemption is con-  
20          sistent with the public interest, the protection of in-  
21          vestors, and the purposes of this section.

22          “(5) CONFIDENTIALITY.—The Board may, by  
23          rule, designate portions of the filings required pursu-  
24          ant to paragraphs (2) and (3) as privileged and con-  
25          fidential.

1 “(f) DUTIES REGARDING QUALITY CONTROL.—

2 “(1) OBJECTIVES; ATTAINMENT.—The Board  
3 shall seek to promote a high level of professional  
4 conduct among public accounting firms registered  
5 with the Board, to improve the quality of audit serv-  
6 ices provided by such firms, and, in general, to pro-  
7 tect investors and promote the public interest. The  
8 Board shall attain these objectives—

9 “(A) by establishing standards regarding  
10 the performance of financial audits in accord-  
11 ance with the requirements of paragraph (2);

12 “(B) by the direct performance of quality  
13 reviews and inspections of audits in accordance  
14 with the requirements of paragraph (3); and

15 “(C) if the Board make the determination  
16 required by paragraph (4)(A), by the super-  
17 vision and oversight of peer review organiza-  
18 tions in accordance with the requirements of  
19 paragraph (4).

20 “(2) AUDIT QUALITY STANDARDS.—

21 “(A) IN GENERAL.—The Board shall, by  
22 rule, establish quality standards applicable to  
23 the conduct of audit services provided by public  
24 accounting firms. Such standards shall  
25 include—

1 “(i) independence standards;

2 “(ii) quality control standards;

3 “(iii) professional and ethical stand-  
4 ards; and

5 “(iv) such other standards as the  
6 Board determines to be necessary to carry  
7 out the objectives specified in paragraph  
8 (1).

9 “(B) SPECIFIC CONTENTS OF STAND-  
10 ARDS.—In establishing the quality standards  
11 required by subparagraph (A), the Board shall  
12 also establish—

13 “(i) procedures for the monitoring by  
14 public accounting firms of their compliance  
15 with professional ethical standards estab-  
16 lished by the Board, including its inde-  
17 pendence from its audit clients;

18 “(ii) procedures for the assignment of  
19 personnel to audit engagements;

20 “(iii) procedures for consultation with-  
21 in a public accounting firm or with other  
22 accountants relating to accounting and au-  
23 diting questions;

24 “(iv) procedures for the supervision of  
25 audit work;

1 “(v) procedures for the review of deci-  
2 sions to accept and retain audit clients;

3 “(vi) procedures for the internal in-  
4 spection of the public accounting firms own  
5 compliance with such policies and proce-  
6 dures;

7 “(vii) requirements for public account-  
8 ing firms to prepare and maintain for a  
9 period of no less than seven years, audit  
10 work papers and other information related  
11 to any audit report, in sufficient detail to  
12 support the conclusions reached in an  
13 audit report issued by a public accounting  
14 firm; and

15 “(viii) procedures establishing ‘concur-  
16 ring’ or ‘second’ partner review systems for  
17 the evaluation and review of audit work by  
18 a partner that is not in charge of the con-  
19 duct of the audit.

20 “(3) DIRECT REVIEWS OF PUBLIC ACCOUNTING  
21 FIRMS.—The Board shall, by rule, establish proce-  
22 dures for the conduct of a continuing program of in-  
23 spections of each public accounting firm registered  
24 with the Board to assess compliance by such firm,  
25 and by persons associated with such firm, with ap-



1 plicable provisions of this Act, the securities laws,  
2 the rules and regulations thereunder, the rules  
3 adopted by the Board, and professional standards.  
4 Except as provided in paragraph (5), the Board  
5 shall annually inspect each public accounting firm  
6 that audits more than one hundred issuers on an on-  
7 going annual basis, to the extent practicable, and all  
8 other public accounting firms no less than at least  
9 once every three years. In conducting such inspec-  
10 tions, the Board shall, among other things, inspect  
11 selected audit and review engagements. The review  
12 shall include evaluations of the firms quality control  
13 procedures and compliance with all legal and ethical  
14 requirements. In connection with each review, the  
15 Board shall prepare a report of its findings and such  
16 report, accompanied by any letter of comments by  
17 the Board or reviewer and any letter of response  
18 from the firm under review, shall be made available  
19 to the public. The Board shall take any appropriate  
20 disciplinary or remedial action based on its findings  
21 after completion of such review.

22 “(4) QUALITY REVIEW OF INDIVIDUAL AU-  
23 DITS.—The Board shall, by rule, establish proce-  
24 dures for the conduct of direct inspection and review  
25 of individual audits of issuers and standards under

1       which it will evaluate audit service quality. The  
2       Board shall further establish the procedures and  
3       standards under which the Board shall approve any  
4       extension of an engagement provided to an account-  
5       ant under section 10B(b)(2) on the basis of a satis-  
6       factory review of the accountant's audit during the  
7       preceding engagement. A finding by the Board that  
8       an individual audit of an issuer did or did not meet  
9       the standards of the Board with respect to the qual-  
10      ity of the audit shall not be construed in any action  
11      arising out of the securities laws as indicative of  
12      compliance or noncompliance with the securities laws  
13      or with any standard of liability arising thereunder.

14           “(5) USE OF PROFESSIONAL PEER REVIEW OR-  
15      GANIZATIONS.—

16           “(A) OPTION TO UTILIZE PEER REVIEW  
17      ORGANIZATIONS.—The Board may by rule es-  
18      tablish requirements for the use of peer review  
19      organizations for the purposes of conducting  
20      the continuing program of inspections to assess  
21      compliance as required by paragraph (3) of  
22      each public accounting firm registered with the  
23      Board. Such rule shall provide for appropriate  
24      oversight and supervision of such peer review  
25      organization by the Board to ensure that such

1 inspections meet the requirements of such para-  
2 graph.

3 “(B) PENALTIES.—If the Board estab-  
4 lishes requirements for the conduct of peer re-  
5 views under subparagraph (A), the violation by  
6 a public accounting firm or a person associated  
7 with such a firm of a rule of the peer review or-  
8 ganization to which the firm belongs shall con-  
9 stitute grounds for—

10 “(i) the imposition of disciplinary  
11 sanctions by the Board pursuant to sub-  
12 section (g); and

13 “(ii) denial to the public accounting  
14 firm or person associated with such firm of  
15 the privilege of appearing or practicing be-  
16 fore the Commission.

17 “(6) CONFIDENTIALITY.—Except as otherwise  
18 provided by this section, all reports, memoranda,  
19 and other information provided to the Board solely  
20 for purposes of paragraph (3) or (4), or to a peer  
21 review organization certified by the Board, shall be  
22 confidential and privileged, unless such confiden-  
23 tiality and privilege are expressly waived by the per-  
24 son or entity that created or provided the informa-  
25 tion.

1       “(g) DISCIPLINARY DUTIES OF BOARD.—The Board  
2 shall have the following duties and powers:

3               “(1) INVESTIGATIONS AND DISCIPLINARY PRO-  
4 CEEDINGS.—The Board shall establish fair proce-  
5 dures for investigating and disciplining public ac-  
6 counting firms registered with the Board, and per-  
7 sons associated with such firms, for violations of the  
8 Federal securities laws, the rules or regulations  
9 issued thereunder, the rules adopted by the Board,  
10 or professional standards in connection with the  
11 preparation of an accountant’s report on a financial  
12 statement, report, or other document filed with the  
13 Commission.

14               “(2) INVESTIGATION PROCEDURES.—

15                       “(A) IN GENERAL.—The Board may con-  
16 duct an investigation of any act, practice, or  
17 omission by a public accounting firm registered  
18 with the Board, or by any person associated  
19 with such firm, in connection with the prepara-  
20 tion of an accountant’s report on a financial  
21 statement, report, or other document filed with  
22 the Commission that may violate any applicable  
23 provision of the Federal securities laws, the  
24 rules and regulations issued thereunder, the  
25 rules adopted by the Board, or professional

standards, whether such act, practice, or omission is the subject of a criminal, civil, or administrative action, or a disciplinary proceeding, or otherwise is brought to the attention of the Board.

“(B) POWERS OF BOARD.—For purposes of an investigation under this paragraph, the Board may, in addition to such other actions as the Board determines to be necessary or appropriate—

“(i) require the testimony of any person associated with a public accounting firm registered with the Board, with respect to any matter which the Board considers relevant or material to the investigation;

“(ii) require the production of audit workpapers and any other document or information in the possession of a public accounting firm registered with the Board, or any person associated with such firm, wherever domiciled, that the Board considers relevant or material to the investigation, and may examine the books and records of such firm to verify the accuracy

1 of any documents or information so sup-  
2 plied; and

3 “(iii) request the testimony of any  
4 person and the production of any docu-  
5 ment in the possession of any person, in-  
6 cluding a client of a public accounting firm  
7 registered with the Board, that the Board  
8 considers relevant or material to the inves-  
9 tigation.

10 “(C) SUSPENSION OR REVOCATION OF  
11 REGISTRATION FOR NONCOMPLIANCE.—The re-  
12 fusar of any person associated with a public ac-  
13 counting firm registered with the Board to tes-  
14 tify, or the refusal of any such person to  
15 produce documents or otherwise cooperate with  
16 the Board, in connection with an investigation  
17 under this section, shall be cause for sus-  
18 pending or barring such person from associ-  
19 ating with a public accounting firm registered  
20 with the Board, or such other appropriate sanc-  
21 tion as the Board shall determine. The refusal  
22 of any public accounting firm registered with  
23 the Board to produce documents or otherwise  
24 cooperate with the Board, in connection with an  
25 investigation under this section, shall be cause

1 for the suspension or revocation of the registra-  
2 tion of such firm, or such other appropriate  
3 sanction as the Board shall determine.

4 “(D) REFERRAL TO COMMISSION.—

5 “(i) IN GENERAL.—If the Board is  
6 unable to conduct or complete an inves-  
7 tigation under this section because of the  
8 refusal of any client of a public accounting  
9 firm registered with the Board, or any  
10 other person, to testify, produce docu-  
11 ments, or otherwise cooperate with the  
12 Board in connection with such investiga-  
13 tion, the Board shall report such refusal to  
14 the Commission.

15 “(ii) INVESTIGATION.—The Commis-  
16 sion may designate the Board or one or  
17 more officers of the Board who shall be  
18 empowered, in accordance with such proce-  
19 dures as the Commission may adopt, to  
20 subpoena witnesses, compel their attend-  
21 ance, and require the production of any  
22 books, papers, correspondence, memo-  
23 randa, or other records relevant to any in-  
24 vestigation by the Board. Attendance of  
25 witnesses and the production of any

1 records may be required from any place in  
2 the United States or any State at any des-  
3 ignated place of hearing. Enforcement of a  
4 subpoena issued by the Board, or an offi-  
5 cer of the Board, pursuant to this subpara-  
6 graph shall occur in the manner provided  
7 for in section 21(c). Examination of wit-  
8 nesses subpoenaed pursuant to this sub-  
9 paragraph shall be conducted before an of-  
10 ficer authorized to administer oaths by the  
11 laws of the United States or of the place  
12 where the examination is held.

13 “(iii) REFERRALS TO COMMISSION.—

14 The Board may refer any investigation to  
15 the Commission, as the Board deems ap-  
16 propriate.

17 “(E) IMMUNITY FROM CIVIL LIABILITY.—

18 An employee of the Board engaged in carrying  
19 out an investigation or disciplinary proceeding  
20 under this section shall be immune from any  
21 civil liability arising out of such investigation or  
22 disciplinary proceeding in the same manner and  
23 to the same extent as an employee of the Fed-  
24 eral Government in similar circumstances.

25 “(3) DISCIPLINARY PROCEDURES.—



1           “(A) DECISION TO DISCIPLINE.—In a pro-  
2           ceeding by the Board to determine whether a  
3           public accounting firm, or a person associated  
4           with such firm, should be disciplined, the Board  
5           shall bring specific charges, notify such firm or  
6           person of the charges, give such firm or person  
7           an opportunity to defend against such charges,  
8           and keep a record of such actions.

9           “(B) SANCTIONS.—If the Board finds that  
10          a public accounting firm, or a person associated  
11          with such firm, has engaged in any act, prac-  
12          tice, or omission in violation of the Federal se-  
13          curities laws, the rules or regulations issued  
14          thereunder, the rules adopted by the Board, or  
15          professional standards, the Board may impose  
16          such disciplinary sanctions as it deems appro-  
17          priate, including—

18               “(i) temporary or permanent revoca-  
19               tion or suspension of registration under  
20               this section;

21               “(ii) limitation of activities, functions,  
22               and operations;

23               “(iii) fine;

24               “(iv) censure;

1 “(v) in the case of a person associated  
2 with a public accounting firm, suspension  
3 or bar from being associated with a public  
4 accounting firm registered with the Board;  
5 and

6 “(vi) any other disciplinary sanction  
7 or remedial action that the Board deter-  
8 mines to be appropriate to prevent the re-  
9 currence of the violation.

10 “(C) STATEMENT REQUIRED.—A deter-  
11 mination by the Board to impose a disciplinary  
12 sanction shall be supported by a written state-  
13 ment by the Board that shall be made available  
14 to the public and that sets forth—

15 “(i) any act or practice in which the  
16 public accounting firm or person associated  
17 with such firm has been found to have en-  
18 gaged, or which such firm or person has  
19 been found to have omitted;

20 “(ii) the specific provision of the Fed-  
21 eral securities laws, the rules or regula-  
22 tions issued thereunder, the rules adopted  
23 by the Board, or professional standards  
24 which any such act, practice, or omission is  
25 deemed to violate; and

1 “(iii) the sanction imposed and the  
2 reasons therefor.

3 “(D) PROHIBITION ON ASSOCIATION.—It  
4 shall be unlawful—

5 “(i) for any person as to whom a sus-  
6 pension or bar is in effect willfully to be or  
7 to become associated with a public ac-  
8 counting firm registered with the Board, in  
9 connection with the preparation of an ac-  
10 countant’s report on any financial state-  
11 ment, report, or other document filed with  
12 the Commission, without the consent of the  
13 Board or the Commission; and

14 “(ii) for any public accounting firm  
15 registered with the Board to permit such a  
16 person to become, or remain, associated  
17 with such firm without the consent of the  
18 Board or the Commission, if such firm  
19 knew or, in the exercise of reasonable care  
20 should have known, of such suspension or  
21 bar.

22 “(4) REPORTING OF SANCTIONS.—If the Board  
23 imposes a disciplinary sanction against a public ac-  
24 counting firm, or a person associated with such firm,  
25 the Board shall report such sanction to the Commis-

sion (in accordance with subsection (h)(3)(A)), to the appropriate State or foreign licensing board or boards with which such firm or such person is licensed or certified to practice public accounting, and to the public. The information reported shall include—

“(A) the name of the public accounting firm, or person associated with such firm, against whom the sanction is imposed;

“(B) a description of the acts, practices, or omissions upon which the sanction is based;

“(C) the nature of the sanction; and

“(D) such other information respecting the circumstances of the disciplinary action (including the name of any client of such firm affected by such acts, practices, or omissions) as the Board deems appropriate.

“(5) DISCOVERY AND ADMISSIBILITY OF BOARD MATERIAL.—

“(A) DISCOVERABILITY.—

“(i) IN GENERAL.—Except as provided in subparagraph (C), all reports, memoranda, and other information prepared, collected, or received by the Board, and the deliberations and other pro-

1           ceedings of the Board and its employees  
2           and agents in connection with an investiga-  
3           tion or disciplinary proceeding under this  
4           section shall not be subject to any form of  
5           civil discovery, including demands for pro-  
6           duction of documents and for testimony of  
7           individuals, in connection with any pro-  
8           ceeding in any State or Federal court, or  
9           before any State or Federal administrative  
10          agency. This subparagraph shall not apply  
11          to any information provided to the Board  
12          that would have been subject to discovery  
13          from the person or entity that provided it  
14          to the Board, but is no longer available  
15          from that person or entity.

16               “(ii) EXEMPTION.—Submissions to  
17          the Board by or on behalf of a public ac-  
18          counting firm or person associated with  
19          such a firm or on behalf of any other par-  
20          ticipant in a Board proceeding, including  
21          documents generated by the Board itself,  
22          shall be exempt from discovery to the same  
23          extent as the material described in clause  
24          (i), whether in the possession of the Board  
25          or any other person, if such submission—

1                   “(I) is prepared specifically for  
2                   the purpose of the Board proceeding;  
3                   and

4                   “(II) addresses the merits of the  
5                   issues under investigation by the  
6                   Board.

7                   “(iii) HEARINGS PUBLIC.—Except as  
8                   otherwise ordered by the Board on its own  
9                   motion or on the motion of a party, all  
10                  hearing under this paragraph shall be open  
11                  to the public.

12                  “(B) ADMISSIBILITY.—

13                  “(i) IN GENERAL.—Except as pro-  
14                  vided in subparagraph (C), all reports,  
15                  memoranda, and other information pre-  
16                  pared, collected, or received by the Board,  
17                  the deliberations and other proceedings of  
18                  the Board and its employees and agents in  
19                  connection with an investigation or discipli-  
20                  nary proceeding under this section, the  
21                  fact that an investigation or disciplinary  
22                  proceeding has been commenced, and the  
23                  Board’s determination with respect to any  
24                  investigation or disciplinary proceeding  
25                  shall be inadmissible in any proceeding in

1 any State or Federal court or before any  
2 State or Federal administrative agency.

3 “(ii) TREATMENT OF CERTAIN DOCU-  
4 MENTS.—Submissions to the Board by or  
5 on behalf of a public accounting firm or  
6 person associated with such a firm or on  
7 behalf of any other participant in a Board  
8 proceeding, including documents generated  
9 by the Board itself, shall be inadmissible to  
10 the same extent as the material described  
11 in clause (i), if such submission—

12 “(I) is prepared specifically for  
13 the purpose of the Board proceedings;  
14 and

15 “(II) addresses the merits of the  
16 issues under investigation by the  
17 Board.

18 “(C) AVAILABILITY AND ADMISSIBILITY OF  
19 INFORMATION.—

20 “(i) IN GENERAL.—All information  
21 referred to in subparagraphs (A) and (B)  
22 shall be—

23 “(I) available to the Commission  
24 and to any other Federal department  
25 or agency in connection with the exer-

1           cise of its regulatory authority to the  
2           extent that such information would be  
3           available to such agency from the  
4           Commission as a result of a Commis-  
5           sion enforcement investigation;

6                   “(II) available to Federal and  
7           State authorities in connection with  
8           any criminal investigation or pro-  
9           ceeding;

10                   “(III) admissible in any action  
11           brought by the Commission or any  
12           other Federal department or agency  
13           pursuant to its regulatory authority,  
14           to the extent that such information  
15           would be available to such agency  
16           from the Commission as a result of a  
17           Commission enforcement investigation  
18           and in any criminal action; and

19                   “(IV) available to State licensing  
20           boards to the extent authorized in  
21           paragraph (6).

22                   “(ii) OTHER LIMITATIONS.—Any doc-  
23           uments or other information provided to  
24           the Commission or other authorities pursu-  
25           ant to clause (i) shall be subject to the lim-



1           itations on discovery and admissibility set  
2           forth in subparagraphs (A) and (B).

3           “(D) TITLE 5 TREATMENT.—This sub-  
4           section shall be considered to be a statute de-  
5           scribed in section 552(b)(3)(B) of title 5,  
6           United States Code, for purposes of that sec-  
7           tion 552.

8           “(6) PARTICIPATION BY STATE LICENSING  
9           BOARDS.—

10           “(A) NOTICE.—When the Board institutes  
11           an investigation pursuant to paragraph (2)(A),  
12           it shall notify the State licensing boards in the  
13           States in which the public accounting firm or  
14           person associated with such firm engaged in the  
15           act or failure to act alleged to have violated  
16           professional standards, of the pendency of the  
17           investigation, and shall invite the State licens-  
18           ing boards to participate in the investigation.

19           “(B) ACCEPTANCE BY STATE BOARD.—If a  
20           State licensing board elects to join in the inves-  
21           tigation, its representatives shall participate,  
22           pursuant to rules established by the Board, in  
23           investigating the matter and in presenting the  
24           evidence justifying the charges in any hearing  
25           pursuant to paragraph (3)(A).

1           “(C) STATE SANCTIONS PERMITTED.—If  
 2           the Board or the Commission imposes a sanc-  
 3           tion upon a public accounting firm or person  
 4           associated with such a firm, and that deter-  
 5           mination either is not subjected to judicial re-  
 6           view or is upheld on judicial review, a State li-  
 7           censing board may impose a sanction on the  
 8           basis of the Board’s report pursuant to para-  
 9           graph (4). Any sanction imposed by the State  
 10          licensing board under this clause shall be inad-  
 11          missible in any proceeding in any State or Fed-  
 12          eral court or before any State or Federal ad-  
 13          ministrative agency, except to the extent pro-  
 14          vided in paragraph (5)(D).

15          “(h) COMMISSION OVERSIGHT OF THE BOARD.—

16               “(1) PROPOSED RULE CHANGES.—

17                   “(A) IN GENERAL.—The Board shall file  
 18                   with the Commission, in accordance with such  
 19                   rules as the Commission may prescribe, copies  
 20                   of any proposed rule or any proposed change in,  
 21                   addition to, or deletion from the rules of the  
 22                   Board (hereafter in this subsection collectively  
 23                   referred to as a ‘proposed rule change’) accom-  
 24                   panied by a concise general statement of the  
 25                   basis and purpose of such proposed rule

1 change. The Commission shall, upon the filing  
2 of any proposed rule change, publish notice  
3 thereof together with the terms of substance of  
4 the proposed rule change or a description of the  
5 subjects and issues involved. The Commission  
6 shall give interested persons an opportunity to  
7 submit written data, views, and arguments con-  
8 cerning the proposed rule change. No proposed  
9 rule change shall take effect unless approved by  
10 the Commission or otherwise permitted in ac-  
11 cordance with this subsection.

12 “(B) APPROVAL OR DISAPPROVAL.—

13 “(i) IN GENERAL.—Not later than 35  
14 days after the date on which notice of the  
15 filing of a proposed rule change is pub-  
16 lished in accordance with subparagraph  
17 (A), or such longer period as the Commis-  
18 sion may designate (not to exceed 90 days  
19 after such date, if it finds such longer pe-  
20 riod to be appropriate and publishes its  
21 reasons for such finding or as to which the  
22 Board consents) the Commission shall—

23 “(I) by order approve such pro-  
24 posed rule change; or

1                   “(II) institute proceedings to de-  
2                   termine whether the proposed rule  
3                   change should be disapproved.

4                   “(ii) DISAPPROVAL PROCEEDINGS.—  
5                   Proceedings for disapproval shall include  
6                   notice of the grounds for disapproval under  
7                   consideration and opportunity for hearing  
8                   and shall be concluded not later than 180  
9                   days after the date of publication of notice  
10                  of the filing of the proposed rule change.  
11                  At the conclusion of the proceedings for  
12                  disapproval, the Commission, by order,  
13                  shall approve or disapprove such proposed  
14                  rule change. The Commission may extend  
15                  the time for conclusion of such proceedings  
16                  for—

17                   “(I) not more than 60 days, if  
18                   the Commission finds good cause for  
19                   such extension and publishes its rea-  
20                   sons for such finding; or

21                   “(II) such longer period to which  
22                   the Board consents.

23                   “(iii) APPROVAL.—The Commission  
24                   shall approve a proposed rule change if it  
25                   finds that such proposed rule change is

1 consistent with the requirements of the se-  
2 curities laws, and the rules and regulations  
3 issued thereunder, applicable to the Board.  
4 The Commission shall disapprove a pro-  
5 posed rule change if it does not make such  
6 finding. The Commission shall not approve  
7 any proposed rule change prior to the expi-  
8 ration of the 30-day period beginning on  
9 the date on which notice of the filing of a  
10 proposed rule change is published in ac-  
11 cordance with this subparagraph, unless  
12 the Commission finds good cause to do so  
13 and publishes its reasons for such finding.

14 “(C) EFFECT OF PROPOSED RULE  
15 CHANGE.—

16 “(i) EFFECTIVE DATE.—Notwith-  
17 standing subparagraph (B), a proposed  
18 rule change may take effect upon filing  
19 with the Commission if designated by the  
20 Board as—

21 “(I) constituting a stated policy,  
22 practice, or interpretation with respect  
23 to the meaning, administration, or en-  
24 forcement of an existing rule of the  
25 Board;

1 “(II) establishing or changing a  
2 due, fee, or other charge imposed by  
3 the Board; or

4 “(III) concerned solely with the  
5 administration of the Board or other  
6 matters which the Commission, by  
7 rule, consistent with the public inter-  
8 est and the purposes of this sub-  
9 section, may specify.

10 “(ii) SUMMARY EFFECT.—Notwith-  
11 standing any other provision of this sub-  
12 section, a proposed rule change may be put  
13 into effect summarily if it appears to the  
14 Commission that such action is necessary  
15 for the protection of investors. Any pro-  
16 posed rule change put into effect sum-  
17 marily shall be filed promptly thereafter in  
18 accordance with this paragraph.

19 “(iii) ENFORCEMENT.—Any proposed  
20 rule change which has taken effect pursu-  
21 ant to clause (i) or (ii) may be enforced by  
22 the Board to the extent that it is not in-  
23 consistent with the securities laws, the  
24 rules and regulations issued thereunder,  
25 and applicable Federal and State law. Dur-

1           ing the 60-day period beginning on the  
2           date on which notice of the filing of a pro-  
3           posed rule change if filed in accordance  
4           with this paragraph, the Commission may  
5           summarily abrogate the change in the  
6           rules of the Board made thereby and re-  
7           quire that the proposed rule change be  
8           refiled in accordance with subparagraph  
9           (A) and reviewed in accordance with sub-  
10          paragraph (B), if it appears to the Com-  
11          mission that such action is necessary or  
12          appropriate in the public interest, for the  
13          protection of investors, or otherwise in fur-  
14          therance of the purposes of the securities  
15          laws. Commission action pursuant to the  
16          preceding sentence shall not affect the va-  
17          lidity or force of the rule change during  
18          the period it was in effect and shall not be  
19          reviewable under section 25 of this Act nor  
20          deemed to be ‘final agency action’ for pur-  
21          poses of section 704 of title 5, United  
22          States Code.

23           “(2) AMENDMENT BY COMMISSION OF RULES  
24          OF THE BOARD.—The Commission, by rule, may ab-  
25          rogate, add to, and delete from (hereafter in this

1 subsection collectively referred to as ‘amend’) the  
2 rules of the Board as the Commission deems nec-  
3 essary or appropriate to ensure the fair administra-  
4 tion of the Board, to conform its rules to require-  
5 ments of the securities laws, and the rules and regu-  
6 lations issued thereunder applicable to the Board, or  
7 otherwise in furtherance of the purposes of the secu-  
8 rities laws, in the following manner:

9 “(A) PUBLICATION OF NOTICE.—The  
10 Commission shall notify the Board and publish  
11 notice of the proposed rulemaking in the Fed-  
12 eral Register. The notice shall include the text  
13 of the proposed amendment to the rules of the  
14 Board and a statement of the Commission’s  
15 reasons, including any pertinent facts, for com-  
16 mencing such proposed rulemaking.

17 “(B) COMMENTS.—The Commission shall  
18 give interested persons an opportunity for the  
19 oral presentation of data, views, and arguments,  
20 in addition to an opportunity to make written  
21 submissions. A transcript shall be kept of any  
22 oral presentation.

23 “(C) INCORPORATION.—A rule adopted  
24 pursuant to this subsection shall incorporate  
25 the text of the amendment to the rules of the



1 Board and a statement of the Commission's  
2 basis for and purpose in so amending such  
3 rules. Such statement shall include an identi-  
4 fication of any facts on which the Commission  
5 considers its determination to so amend the  
6 rules of the Board to be based, including the  
7 reasons for the Commission's conclusions as to  
8 any of the facts that were disputed in the rule-  
9 making.

10 “(D) REGULATIONS.—

11 “(i) TITLE 5 APPLICABILITY.—Except  
12 as otherwise provided in this paragraph,  
13 rulemaking under this paragraph shall be  
14 in accordance with the procedures specified  
15 in section 553 of title 5, United States  
16 Code, for rulemaking not on the record.

17 “(ii) CONSTRUCTION.—Nothing in  
18 this subsection shall be construed to impair  
19 or limit the Commission's power to make,  
20 modify, or alter the procedures the Com-  
21 mission may follow in making rules and  
22 regulations pursuant to any other author-  
23 ity under the securities laws.

24 “(iii) INCORPORATION OF AMEND-  
25 MENTS.—Any amendment to the rules of

1           the Board made by the Commission pursu-  
2           ant to this subsection shall be considered  
3           for purposes of the securities laws to be  
4           part of the rules of the Board and shall  
5           not be considered to be a rule of the Com-  
6           mission.

7           “(3) NOTICE OF DISCIPLINARY ACTION TAKEN  
8       BY THE BOARD; REVIEW OF ACTION BY THE COM-  
9       MISSION.—

10           “(A) NOTICE REQUIRED.—If the Board  
11       imposes a final disciplinary sanction on a public  
12       accounting firm registered with the Board or on  
13       any person associated with such a firm, the  
14       Board shall promptly file notice thereof with  
15       the Commission. The notice shall be in such  
16       form and contain such information as the Com-  
17       mission, by rule, may prescribe as necessary or  
18       appropriate in furtherance of the purposes of  
19       the securities laws.

20           “(B) REVIEW.—An action with respect to  
21       which the Board is required by subparagraph  
22       (A) to file notice shall be subject to review by  
23       the Commission, on its own motion, or upon ap-  
24       plication by any person aggrieved thereby, filed  
25       not later than 30 days after the date on which

1 such notice is filed with the Commission and re-  
2 ceived by such aggrieved person, or within such  
3 longer period as the Commission may deter-  
4 mine. Application to the Commission for review,  
5 or the institution of review by the Commission  
6 on its own motion, shall not operate as a stay  
7 of such action unless the Commission otherwise  
8 orders, summarily or after notice and oppor-  
9 tunity for hearing on the question of a stay  
10 (which hearing may consist solely of the sub-  
11 mission of affidavits or presentation of oral ar-  
12 guments). The Commission shall establish for  
13 appropriate cases an expedited procedure for  
14 consideration and determination of the question  
15 of a stay.

16 “(4) DISPOSITION OF REVIEW; CANCELLATION,  
17 REDUCTION, OR REMISSION OF SANCTION.—

18 “(A) IN GENERAL.—In any proceeding to  
19 review a final disciplinary sanction imposed by  
20 the Board on a public accounting firm reg-  
21 istered with the Board or a person associated  
22 with such a firm, after notice and opportunity  
23 for hearing (which hearing may consist solely of  
24 consideration of the record before the Board  
25 and opportunity for the presentation of sup-

1           porting reasons to affirm, modify, or set aside  
2           the sanction)—

3                   “(i) if the Commission finds that—

4                           “(I) such firm or person associ-  
5                           ated with such a firm has engaged in  
6                           such acts or practices, or has omitted  
7                           such acts, as the Board has found  
8                           them to have engaged in or omitted;

9                           “(II) such acts, practices, or  
10                           omissions, are in violation of such  
11                           provisions of the securities laws, the  
12                           rules or regulations issued thereunder,  
13                           the rules adopted by the Board, or  
14                           professional standards as have been  
15                           specified in the determination of the  
16                           Board; and

17                           “(III) such provisions were ap-  
18                           plied in a manner consistent with the  
19                           purposes of the securities laws;

20           the Commission, by order, shall so declare  
21           and, as appropriate, affirm the sanction  
22           imposed by the Board, modify the sanction  
23           in accordance with paragraph (2), or re-  
24           mand to the Board for further pro-  
25           ceedings; or

1                   “(ii) if the Commission does not make  
2                   the findings under clause (i), it shall, by  
3                   order, set aside the sanction imposed by  
4                   the Board and, if appropriate, remand to  
5                   the Board for further proceedings.

6                   “(B) CANCELLATION, REDUCTION, OR RE-  
7                   MISSION OF SANCTION.—If the Commission,  
8                   having due regard for the public interest and  
9                   the protection of investors, finds after a pro-  
10                  ceeding in accordance with subparagraph (A)  
11                  that a sanction imposed by the Board upon a  
12                  firm or person associated with a firm imposes  
13                  any burden on competition not necessary or ap-  
14                  propriate in furtherance of the purposes of the  
15                  securities laws or is excessive or oppressive, the  
16                  Commission may cancel, reduce, or require the  
17                  remission of such sanction.

18                  “(5) COMPLIANCE WITH RULES AND REGULA-  
19                  TIONS.—

20                  “(A) DUTIES OF BOARD.—The Board  
21                  shall—

22                         “(i) comply with the securities laws,  
23                         the rules and regulations issued there-  
24                         under, and its own rules; and

1                   “(ii) subject to subparagraph (B) and  
2                   the rules thereunder, absent reasonable  
3                   justification or excuse, enforce compliance  
4                   with such provisions and with professional  
5                   standards by public accounting firms reg-  
6                   istered with the Board and persons associ-  
7                   ated with such firms.

8                   “(B) RELIEF BY COMMISSION.—The Com-  
9                   mission, by rule, consistent with the public in-  
10                  terest, the protection of investors, and the other  
11                  purposes of the securities laws, may relieve the  
12                  Board of any responsibility under this section  
13                  to enforce compliance with any specified provi-  
14                  sion of the securities laws, the rules or regula-  
15                  tions issued thereunder, or professional stand-  
16                  ards by any public accounting firm registered  
17                  with the Board or person associated with such  
18                  a firm, or any class of such firms or persons as-  
19                  sociated with such a firm.

20                  “(i) FOREIGN ACCOUNTING FIRMS.—A foreign public  
21                  accounting firm that furnishes accountant’s reports on  
22                  any financial statement, report, or other document re-  
23                  quired to be filed with the Commission under any Federal  
24                  securities law shall, with respect to those reports, be sub-  
25                  ject to the provisions of this section in the same manner

1 and to the same extent as a domestic public accounting  
 2 firm. The Commission may, by rule, regulation, or order  
 3 and as it deems consistent with the public interest and  
 4 the protection of investors, either unconditionally or upon  
 5 specified terms and conditions, exempt from one or more  
 6 provisions of this section any foreign public accounting  
 7 firm. Registration pursuant to this subsection shall not,  
 8 by itself, provide a basis for subjecting foreign accounting  
 9 firms to the jurisdiction of the Federal or State courts.

10 “(j) COMMISSION AUTHORITY NOT IMPAIRED.—  
 11 Nothing in this section shall be construed to impair or  
 12 limit the Commission’s authority—

13 “(1) over the accounting profession, accounting  
 14 firms, or any persons associated with such firms;

15 “(2) to set standards for accounting practices,  
 16 derived from other provisions of the securities laws  
 17 or the rules or regulations issued thereunder; or

18 “(3) to take, on its own initiative, legal, admin-  
 19 istrative, or disciplinary action against any public  
 20 accounting firm registered with the Board or any  
 21 person associated with such a firm.”.

22 **SEC. 5. STUDY ON THE IMPROVEMENT OF CORPORATE**  
 23 **GOVERNANCE.**

24 (a) STUDY OF CORPORATE PRACTICES.—The Com-  
 25 mission shall conduct a study and review of current cor-

1 porate governance standards and practices to determine  
2 whether such standards and practices are serving the best  
3 interests of shareholders. Such study and review shall in-  
4 clude an analysis of—

5 (1) whether current standards and practices  
6 promote full disclosure of relevant information to  
7 shareholders;

8 (2) whether corporate codes of ethics and inde-  
9 pendence requirements are adequate to protect  
10 shareholders, and to what extent deviations from  
11 such codes are tolerated;

12 (3) the existing requirements for qualification  
13 of members of the audit and finance committee of  
14 issuer boards to determine whether such require-  
15 ments are adequate to create a board structure that  
16 assures the sufficiency of the issuer's disclosure;

17 (4) the extent to which conflicts of interests are  
18 aggressively reviewed, including an assessment of  
19 whether the current standards for determining a di-  
20 rector to be independent are adequate, and whether  
21 adequate means for redressing such conflicts exist;

22 (5) whether there are significant disincentives  
23 to serve as an independent director and what are the  
24 necessary and appropriate regulatory or legislative



1 changes on the State and Federal level to reduce or  
 2 eliminate such disincentives; and

3 (6) what further or additional practices or  
 4 standards might best protect investors and promote  
 5 the interests of shareholders.

6 (b) PARTICIPATION OF STATE REGULATORS.—In  
 7 conducting the study required under subsection (a), the  
 8 Commission shall seek the views of, and consult with, the  
 9 securities and corporate regulators of the various States.

10 (c) REPORT REQUIRED.—The Commission shall sub-  
 11 mit a report on the analysis required under subsection (a)  
 12 to the Committee on Financial Services of the House of  
 13 Representatives and the Committee on Banking, Housing,  
 14 and Urban Affairs of the Senate no later than 180 days  
 15 after the date of enactment of this Act.

16 **SEC. 6. INSIDER TRADES DURING PENSION FUND BLACK-**  
 17 **OUT PERIODS PROHIBITED.**

18 Section 16 of the Securities Exchange Act of 1934  
 19 (15 U.S.C. 78p) is amended by adding at the end the fol-  
 20 lowing new subsection:

21 “(h) INSIDER TRADES DURING PENSION FUND  
 22 BLACKOUT PERIODS PROHIBITED.—

23 “(1) PROHIBITION.—It shall be unlawful for  
 24 any such beneficial owner, director, or officer, di-  
 25 rectly or indirectly, to purchase (or otherwise ac-

1       quire) or sell (or otherwise transfer) any equity secu-  
2       rity of any issuer (other than an exempted security),  
3       during any blackout period with respect to such eq-  
4       uity security.

5           “(2) REMEDY.—Any profit realized by such  
6       beneficial owner, director, or officer from any pur-  
7       chase (or other acquisition) or sale (or other trans-  
8       fer) in violation of this subsection shall inure to and  
9       be recoverable by the issuer irrespective of any in-  
10      tention on the part of such beneficial owner, direc-  
11      tor, or officer in entering into the transaction.

12          “(3) RULEMAKING PERMITTED.—The Commis-  
13      sion may issue rules to clarify the application of this  
14      subsection, to ensure adequate notice to all persons  
15      affected by this subsection, and to prevent evasion  
16      thereof.

17          “(4) DEFINITIONS.—For purposes of this  
18      subsection—

19           “(A) the term ‘blackout period’ with re-  
20      spect to the equity securities of any issuer—

21           “(i) means any period during which  
22           the employees of such issuer are precluded  
23           from purchasing (or otherwise acquiring)  
24           or selling (or otherwise transferring) their  
25           interest in any equity security of such

1 issuer held in an individual account plan  
2 of such issuer; but

3 “(ii) does not include a period in  
4 which the employees of an issuer may not  
5 allocate their interests in the individual ac-  
6 count plan due to an express investment  
7 restriction—

8 “(I) incorporated into the indi-  
9 vidual account plan; and

10 “(II) timely disclosed to employ-  
11 ees before joining the individual ac-  
12 count plan or as a subsequent amend-  
13 ment to the plan; and

14 “(B) the term ‘individual account plan’ has  
15 the meaning provided such term in section  
16 3(34) of the Employee Retirement Income Se-  
17 curity Act of 1974 (29 U.S.C. 1002(34)).”.

18 **SEC. 7. IMPROVEMENTS IN FINANCIAL REPORTING.**

19 (a) SPECIFIC OBJECTIVES.—The Commission shall  
20 initiate a proceeding to propose changes in its rules and  
21 regulations with respect to financial reporting to improve  
22 the transparency and clarity of the information available  
23 to investors and to require increased financial disclosure  
24 with respect to the following:

1           (1) OFF-BALANCE SHEET TRANSACTIONS.—The  
2           issuer’s off-balance sheet transactions and relation-  
3           ships with unconsolidated entities or other persons,  
4           to the extent they are not disclosed in the financial  
5           statement and expose the issuer to current or future  
6           possible liability, obligations, expenses, or cash flow  
7           changes, or affect the recognition of revenue, car-  
8           rying value, or potential impairment of assets, credit  
9           ratings, earnings, cash flows, or stock price.

10          (2) INSIDER TRANSACTIONS.—Relationships  
11          and transactions—

12                 (A) between the issuer, affiliates of the  
13                 issuer, and officers, directors, or employees of  
14                 the issuer or such affiliates; and

15                 (B) between officers, directors, employees,  
16                 or affiliates of the issuer and entities that are  
17                 not otherwise affiliated with the issuer,

18          to the extent such arrangement or transaction cre-  
19          ates a conflict of interest for such persons. Such dis-  
20          closure shall provide a description of such elements  
21          of the transaction as are necessary for an under-  
22          standing of the business purpose and economic sub-  
23          stance of such transaction (including contingencies).

24          The disclosure shall provide sufficient information to  
25          determine the effect on the issuer’s financial state-

1       ments and describe compensation arrangements of  
2       interested parties to such transactions.

3           (3) RELATIONSHIPS WITH PHILANTHROPIC OR-  
4       GANIZATIONS.—Relationships between the registrant  
5       or any executive officer of the registrant and any  
6       not-for-profit organization on whose board a director  
7       or immediate family member serves or of which a di-  
8       rector or immediate family member serves as an offi-  
9       cer or in a similar capacity. Relationships that shall  
10      be disclosed include contributions to the organization  
11      in excess of \$10,000 made by the registrant or any  
12      executive officer in the last five years and any other  
13      activity undertaken by the registrant or any execu-  
14      tive officer that provides a material benefit to the or-  
15      ganization. Material benefit includes lobbying.

16          (4) INSIDER-CONTROLLED AFFILIATES.—Rela-  
17      tionships in which the registrant or any executive of-  
18      ficer exercises significant control over an entity in  
19      which a director or immediate family member owns  
20      an equity interest or to which a director or imme-  
21      diate family member has extended credit. Significant  
22      control should be defined with reference to the con-  
23      tractual and governance arrangements between the  
24      registrant or executive officer, as the case may be,  
25      and the entity.

1           (5) JOINT OWNERSHIP.—Joint ownership by a  
2           registrant or executive officer and a director or im-  
3           mediate family member of any real or personal prop-  
4           erty.

5           (6) PROVISION OF SERVICES BY RELATED PER-  
6           SONS.—The provision of any professional services,  
7           including legal, financial advisory or medical serv-  
8           ices, by a director or immediate family member to  
9           any executive officer of the registrant in the last five  
10          years.

11          (b) GENERAL OBJECTIVES; PLAIN LANGUAGE.—

12           (1) ADDITIONAL PROCEEDING.—In addition to  
13           the proceeding required by subsection (a), the Com-  
14           mission shall initiate a proceeding—

15                   (A) to require financial reports to present  
16                   financial information in plain language, to the  
17                   maximum extent possible; and

18                   (B) to further improve the transparency  
19                   and clarity of the information available to inves-  
20                   tors, in light of the analysis required by para-  
21                   graph (2).

22           (2) ANALYSIS.—In order to determine what ad-  
23           ditional or reorganized information should be dis-  
24           closed to improve the transparency of financial state-  
25           ments filed under the securities laws, the Commis-

1 sion shall review and analyze all enforcement actions  
2 by the Commission, and all restatements of financial  
3 statements and other periodic filings with the Com-  
4 mission, over the five years preceding such date of  
5 enactment to identify areas of reporting that are  
6 most susceptible to fraud, inappropriate manipula-  
7 tion, or inappropriate earnings management.

8 (3) ALTERNATIVES TO BE CONSIDERED.—In  
9 conducting the proceeding required by this sub-  
10 section, the Commission shall consider—

11 (A) requiring the identification of the key  
12 accounting principles that are most important  
13 to the issuer’s reported financial condition or  
14 results of operation;

15 (B) requiring an explanation, where mate-  
16 rial, of how different available accounting prin-  
17 ciples would lead to different presentations re-  
18 garding financial condition or results of oper-  
19 ation; and

20 (C) requiring new or additional disclosure  
21 with respect to—

22 (i) the methodology used by the issuer  
23 in establishing or maintaining reserves;

24 (ii) all officer and director affiliations  
25 with, and any compensation received by an

1 officer or director from, any special pur-  
2 pose entities;

3 (iii) internal controls adopted to ap-  
4 prove the creation of special purpose enti-  
5 ties;

6 (iv) disclosing in detail any arrange-  
7 ments that would require the issuer to as-  
8 sume the debts incurred by a special pur-  
9 pose entity; and

10 (v) additional critical areas identified  
11 by the Commission in connection with  
12 earnings management; and

13 (D) reviewing issuer compliance with and  
14 sufficiency of current rules and regulations re-  
15 lating to revenue recognition.

16 (c) DEADLINES.—

17 (1) IN GENERAL.—Except as provided in para-  
18 graph (2), the Commission shall complete the rule-  
19 making required by this section within 180 days  
20 after the date of enactment of this Act.

21 (2) PLAIN LANGUAGE.—The Commission shall  
22 complete the rulemaking required by subsection  
23 (b)(1)(A) within one year after the date of enact-  
24 ment of this Act.



1 **SEC. 8. CREATION OF CURRENT DISCLOSURE REPORTING**  
2 **SYSTEM.**

3 Section 13 of the Securities Exchange Act of 1934  
4 (15 U.S.C. 78m) is amended by adding at the end the  
5 following new subsection:

6 “(i) CURRENT DISCLOSURE REPORTING SYSTEM.—

7 “(1) RULEMAKING REQUIRED.—The Commis-  
8 sion shall, by rule pursuant to this section, require  
9 issuers to provide timely information with respect to  
10 significant events and trends in the issuer’s oper-  
11 ations, and to consider the total mix of its business  
12 and update its information and accounting systems  
13 to provide for ongoing, current information that  
14 would disclose, among other things—

15 “(A) known and reliable financial informa-  
16 tion throughout each fiscal quarter;

17 “(B) to the extent possible, known trends  
18 in an issuer’s business that would be material  
19 to investors;

20 “(C) assessments of developments during  
21 and between fiscal quarters and the factors that  
22 may have modified prior forecasts or otherwise  
23 changed preliminary financial results that the  
24 issuer may have provided;

25 “(D) financial information on a business  
26 segments basis; and

1           “(E) updates to information previously dis-  
2           closed, whether disclosed in periodic reports  
3           under this section, in previous disclosures under  
4           this subsection, or otherwise.

5           “(2) IMPACT ON FOREIGN ISSUERS.—In con-  
6           ducting the rulemaking required by this subsection,  
7           the Commission shall evaluate—

8           “(A) the impact of requiring current dis-  
9           closures on foreign issuers; and

10          “(B) the extent to which it is advisable to  
11          provide reasonable exceptions to the reporting  
12          requirements for foreign issuers, while at the  
13          same time making the overall disclosure stand-  
14          ards reasonably consistent.

15          Nothing in this paragraph shall be construed to re-  
16          quire the Commission to provide the exceptions de-  
17          scribed in subparagraph (B).

18          “(3) ASSESS IMPACT ON REGULATION FD.—In  
19          conducting the rulemaking required by this sub-  
20          section, the Commission shall assess the impact of  
21          requiring ongoing disclosures on, and need for co-  
22          ordinating that requirement with, the requirements  
23          of Regulation FD (17 CFR part 243).”.

1 **SEC. 9. ENHANCED OVERSIGHT OF PERIODIC DISCLO-**  
2 **SURES BY ISSUERS.**

3 (a) REGULAR AND SYSTEMATIC REVIEW.—The Secu-  
4 rities and Exchange Commission shall review disclosures  
5 made by issuers pursuant to the Securities Exchange Act  
6 of 1934 (including reports filed on form 10-K) on a basis  
7 that is more regular and systematic than that in practice  
8 on the date of enactment on this Act. Such review shall  
9 include a review of an issuer's financial statements.

10 (b) RISK RATING SYSTEM.—For purposes of the re-  
11 views required by subsection (a), the Commission shall es-  
12 tablish a risk rating system whereby issuers receive a risk  
13 rating by the Commission, which shall be used to deter-  
14 mine the frequency of such reviews. In designing such a  
15 risk rating system the Commission shall consider, among  
16 other factors the following:

17 (1) Emerging companies with disparities in  
18 price to earning ratios.

19 (2) Issuers with the largest market capitaliza-  
20 tion.

21 (3) Issuers whose operations significantly im-  
22 pact any material sector of the economy.

23 (4) Systemic factors such as the effect on niche  
24 markets or important subsectors of the economy.

25 (5) Issuers that experience significant volatility  
26 in their stock price as compared to other issuers.

1           (6) Any other factor the Commission may con-  
2           sider relevant.

3           (c) MINIMUM REVIEW PERIOD.—In no event shall an  
4 issuer be reviewed less than once every three years by the  
5 Commission.

6 **SEC. 10. REAUTHORIZATION OF APPROPRIATIONS OF THE**  
7 **SECURITIES AND EXCHANGE COMMISSION.**

8           Subsection (a) of section 35 of the Securities Ex-  
9 change Act of 1934 (15 U.S.C. 78kk(a)) is amended to  
10 read as follows:

11          “(a) IN GENERAL.—In addition to any other funds  
12 authorized to be appropriated to the Securities and Ex-  
13 change Commission, there are authorized to be appro-  
14 priated to carry out the functions, powers, and duties of  
15 the Commission, \$876,000,000 for fiscal year 2003, of  
16 which—

17               “(1) not less than \$134,000,000 shall be avail-  
18 able for the Division of Corporate Finance and the  
19 Office of the Chief Accountant; and

20               “(2) not less than \$326,000,000 shall be avail-  
21 able to the Division of Enforcement.”.

22 **SEC. 11. ELECTRONIC DISCLOSURE OF AFFILIATE TRANS-**  
23 **ACTIONS.**

24          (a) IN GENERAL.—Except as specifically provided in  
25 this Act, and notwithstanding any other provision of law,

1 any disclosure required by the securities laws or the rules  
2 and regulations thereunder of the purchase or sale of any  
3 securities by an officer or director or other affiliated per-  
4 son of the issuer of those securities shall—

5 (1) include the disclosure of the purchase or  
6 sale of any security futures product (as defined in  
7 section 3(a)(56) of the Securities Exchange Act of  
8 1934 (15 U.S.C. 78c(a)(56)) or any security-based  
9 swap agreement (as defined in section 206B of the  
10 Gramm-Leach-Bliley Act) that is based in whole or  
11 in part on the securities of such issuer; and

12 (2) be made available in electronic form—

13 (A) to the Commission by the affiliated  
14 person, before the end of the calendar day on  
15 which the transaction occurs;

16 (B) to the public by the Commission, to  
17 the extent permitted under applicable law, upon  
18 receipt, but in no case later than the end of the  
19 business day on which the disclosure is received  
20 under subparagraph (A); and

21 (C) in any case in which the issuer main-  
22 tains a corporate website that is accessible only  
23 internally, on that internal website, before the  
24 end of the calendar day on which the trans-  
25 action occurs.

1       (b) OTHER FORMATS.—The requirement of disclo-  
 2       sures in electronic form under subsection (a)(2) shall, at  
 3       the discretion of the Commission, be in lieu of any other  
 4       format required for such disclosures on the day before the  
 5       date of enactment of this Act.

6       (c) INCORPORATED DEFINITIONS.—In this Act, the  
 7       terms “affiliated person”, “Commission”, “issuer”, and  
 8       “securities” have the same meanings as in section 3 of  
 9       the Securities Exchange Act of 1934.

10      (d) EFFECTIVE DATE.—This section shall become ef-  
 11      fective 90 days after the date of enactment of this Act.

12      **SEC. 12. RESTORATION OF JOINT AND SEVERAL LIABILITY.**

13      (a) AMENDMENT.—Subparagraph (A) of section  
 14      21D(f)(2) of the Securities Exchange Act of 1934 (15  
 15      U.S.C. 78u–4(f)(2)(A)) is amended to read as follows:

16                   “(A) JOINT AND SEVERAL LIABILITY.—

17                   Any covered person against whom a final judg-  
 18                   ment is entered in a private action shall be lia-  
 19                   ble for damages jointly and severally only if the  
 20                   trier of fact specifically determines that—

21                           “(i) such covered person knowingly  
 22                           committed a violation of the securities  
 23                           laws;

24                           “(ii) the covered person was the audi-  
 25                           tor of the financial statements of the issuer

1 of the securities that are the subject of the  
2 class action and such auditor failed to  
3 comply with section 10A by failing to de-  
4 tect and report an illegal act of such issuer  
5 that is the basis of such class action;

6 “(iii) the covered person was the audi-  
7 tor of the financial statements of such  
8 issuer and such auditor performed any  
9 nonaudit functions for such issuer during  
10 the fiscal year in which an alleged violation  
11 of the securities laws occurred; or

12 “(iv) the issuer of such securities is  
13 insolvent.”.

14 (b) UNCOLLECTABLE SHARES.—Section 21D(f)(4) of  
15 such Act is amended by adding at the end the following  
16 new subparagraph:

17 “(D) INAPPLICABILITY TO INSOLVENCY  
18 CASES.—The provisions of this paragraph shall  
19 not apply in any case in which the trier of fact  
20 determines that the issuer of the securities that  
21 are the subject of the class action is insolvent  
22 under paragraph (2)(A)(iv).”.

23 (c) DISCLOSURE TO JURIES.—Section 21D(f) of such  
24 Act is further amended—

25 (1) by striking paragraph (6); and

1           (2) by redesignating paragraphs (7) through  
2           (10) as paragraphs (6) through (9), respectively.

3           (d) DEFINITION.—Section 21D(f)(9) of such Act (as  
4 redesignated by subsection (c)(2) of this section) is  
5 amended—

6           (1) by striking “and” at the end of subpara-  
7           graph (C);

8           (2) by striking the period at the end of sub-  
9           paragraph (D) and inserting “; and”; and

10           (3) by adding at the end the following new sub-  
11           paragraph:

12                   “(E) an auditor shall be considered to have  
13           performed ‘nonaudit functions for an issuer’ if  
14           such auditor received any compensation for  
15           services from such issuer for a fiscal year that  
16           did not qualify to be treated as audit fees for  
17           such fiscal year for purposes of item 9(e)(1) of  
18           the schedule 14A of such issuer.”.

19           (e) PREVENTION OF STAYS OF DISCOVERY.—

20           (1) Section 21D(b)(3) of such Act is amended  
21           by adding at the end the following new subpara-  
22           graph:

23                   “(E)    INAPPLICABILITY    TO    ACTION  
24           AGAINST AUDITORS.—In any private action  
25           arising under this title against the auditor of



1           the financial statements of the issuer of the se-  
 2           curities that are the subject of such action, dis-  
 3           covery and other proceedings shall not be  
 4           stayed pursuant to this paragraph.”.

5           (2) Section 27(b) of the Securities Act of 1933  
 6           (15 U.S.C. 77z-1(b)) is amended by adding at the  
 7           end the following new paragraph:

8           “(5) INAPPLICABILITY TO ACTION AGAINST  
 9           AUDITORS.—In any private action arising under this  
 10          title against the auditor of the financial statements  
 11          of the issuer of the securities that are the subject of  
 12          such action, discovery and other proceedings shall  
 13          not be stayed pursuant to this subsection.”.

14   **SEC. 13. CREDIT RATING AGENCIES.**

15          (a) STUDY REQUIRED.—The Securities and Ex-  
 16          change Commission shall conduct a study of the role and  
 17          function of credit rating agencies in the operation of the  
 18          securities market. Such study shall examine—

19               (1) the role of the credit rating agencies in the  
 20               evaluation of issuers of securities;

21               (2) the importance of that role to investors and  
 22               the functioning of the securities markets;

23               (3) any impediments to the accurate appraisal  
 24               by credit rating agencies of the financial resources  
 25               and risks of issuers of securities;

1           (4) any measures which may be required to im-  
2       prove the dissemination of information concerning  
3       such resources and risks when credit rating agencies  
4       announce credit ratings; and

5           (5) any conflicts of interest in the operation of  
6       credit rating agencies and measures to prevent such  
7       conflicts or ameliorate the consequences of such con-  
8       flicts.

9       (b) REPORT REQUIRED.—The Commission shall sub-  
10     mit a report on the analysis required by subsection (a)  
11     to the President and the Committee on Financial Services  
12     of the House of Representatives and the Committee on  
13     Banking, Housing, and Urban Affairs of the Senate with-  
14     in 180 days after the date of enactment of this Act.

15     **SEC. 14. RESTORATION OF AIDING AND ABETTING LIABIL-**  
16                             **ITY.**

17       (a) SECURITIES ACT OF 1933.—Section 20 of the Se-  
18     curities Act of 1933 (15 U.S.C. 77t) is amended by adding  
19     at the end the following new subsection:

20       “(g) PROSECUTION OF PERSONS WHO AID OR ABET  
21     VIOLATIONS.—For purposes of subsections (b) and (d),  
22     any person who knowingly or recklessly provides substan-  
23     tial assistance to another person in the violation of a provi-  
24     sion of this title, or of any rule or regulation hereunder,  
25     shall be deemed to violate such provision to the same ex-

1 tent as the person to whom such assistance is provided.  
2 No person shall be liable under this subsection based on  
3 an omission or failure to act unless such omission or fail-  
4 ure constituted a breach of a duty owed by such person.”.

5 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
6 20(e) of the Securities Exchange Act of 1934 (15 U.S.C.  
7 78t(e)) is amended to read as follows:

8 “(e) PROSECUTION OF PERSONS WHO AID OR ABET  
9 VIOLATIONS.—For purposes of subsections (d)(1) and  
10 (d)(3) of section 21, or an action by a self-regulatory orga-  
11 nization, or an express or implied private right of action  
12 under this title, any person who knowingly or recklessly  
13 provides substantial assistance to another person in the  
14 violation of a provision of this title, or of any rule or regu-  
15 lation thereunder, shall be deemed to violate such provi-  
16 sion and shall be liable to the same extent as the person  
17 to whom such assistance is provided. No person shall be  
18 liable under this subsection based on an omission or fail-  
19 ure to act unless such omission or failure constituted a  
20 breach of a duty owed by such person.”.

21 (c) INVESTMENT COMPANY ACT OF 1940.—Section  
22 42 of the Investment Company Act of 1940 (15 U.S.C.  
23 80a–41) is amended by adding at the end the following  
24 new subsection:

1       “(f) PROSECUTION OF PERSONS WHO AID OR ABET  
2 VIOLATIONS.—For purposes of subsections (d) and (e),  
3 any person who knowingly or recklessly provides substan-  
4 tial assistance to another person in the violation of a provi-  
5 sion of this title, or of any rule, regulation, or order here-  
6 under, shall be deemed to violate such provision to the  
7 same extent as the person to whom such assistance is pro-  
8 vided. No person shall be liable under this subsection  
9 based on an omission or failure to act unless such omission  
10 or failure constituted a breach of a duty owed by such  
11 person.”.

12       (d) INVESTMENT ADVISERS ACT OF 1940.—Section  
13 209(d) of the Investment Advisers Act of 1940 (15 U.S.C.  
14 80b–9) is amended—

15           (1) in subsection (d)—

16               (A) by striking “or that any person has  
17 aided, abetted, counseled, commanded, induced,  
18 or procured, is aiding, abetting, counseling,  
19 commanding, inducing, or procuring, or is  
20 about to aid, abet, counsel, command, induce,  
21 or procure such a violation,”; and

22               (B) by striking “or in aiding, abetting,  
23 counseling, commanding, inducing, or procuring  
24 any such act or practice”; and

1           (2) by adding at the end the following new sub-  
2       section:

3       “(f) PROSECUTION OF PERSONS WHO AID OR ABET  
4 VIOLATIONS.—For purposes of subsections (d) and (e),  
5 any person who knowingly or recklessly provides substan-  
6 tial assistance to another person in the violation of a provi-  
7 sion of this title, or of any rule, regulation, or order here-  
8 under, shall be deemed to violate such provision to the  
9 same extent as the person to whom such assistance is pro-  
10 vided. No person shall be liable under this subsection  
11 based on an omission or failure to act unless such omission  
12 or failure constituted a breach of duty owed by such per-  
13 son.”.

14 **SEC. 15. DESTRUCTION OF RECORDS.**

15       (a) AUDIT REQUIREMENTS.—Section 10A of the Se-  
16 curities Exchange Act of 1934 (15 U.S.C. 78j–1) is—

17           (1) by redesignating subsections (e) and (f) as  
18       subsections (f) and (g), respectively; and

19           (2) by inserting after subsection (d) the fol-  
20       lowing new subsection:

21       “(e) DESTRUCTION OF RECORDS.—

22           “(1) MAINTENANCE OF RECORDS REQUIRED.—  
23       Any accountant that conducts an audit of an issuer  
24       pursuant to this title to which subsection (a) applies  
25       shall maintain all documents (including electronic

1 documents) sent, received, or created in connection  
2 with any audit, review, or other engagement for such  
3 issuer for a period of 7 years from the end of the  
4 fiscal period in which the engagement was con-  
5 cluded.

6 “(2) PENALTY.—In addition to any other sanc-  
7 tions that may be available, any person who know-  
8 ingly and willfully violates paragraph (1) shall be  
9 subject to fine and imprisonment to the same extent  
10 as a person violating section 1512(b) of title 18,  
11 United States Code.”.

12 (b) PRESERVATION OF RECORDS DURING SHARE-  
13 HOLDER LITIGATION.—

14 (1) SECURITIES ACT OF 1933.—Section 27(b)(2)  
15 of the Securities Act of 1933 (15 U.S.C. 77z–  
16 1(b)(2)) is amended by inserting “, and the issuer  
17 of the securities that are the subject of such action,”  
18 after “in the complaint”.

19 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-  
20 tion 21D(b)(3)(C)(i) of the Securities Act of 1933  
21 (15 U.S.C. 77z–1(b)(3)(C)(i)) is amended by insert-  
22 ing “, and the issuer of the securities that are the  
23 subject of such action,” after “in the complaint”.

1 (c) STATUTE OF LIMITATIONS.—Title I of the Securi-  
 2 ties Exchange Act of 1934 (15 U.S.C. 78a et seq.) is  
 3 amended by adding at the end the following new section:

4 **“SEC. 37. STATUTE OF LIMITATIONS.**

5 “(a) IN GENERAL.—Except as otherwise specifically  
 6 provided in this title, and notwithstanding section 9(e), an  
 7 implied private right of action arising under this title may  
 8 be brought not later than the earlier of—

9 “(1) 5 years after the date on which the alleged  
 10 violation occurred; or

11 “(2) 3 years after the date on which the alleged  
 12 violation was discovered.

13 “(b) EFFECTIVE DATE.—The limitations period pro-  
 14 vided by this section shall apply to all proceedings com-  
 15 menced after the date of the enactment of the Comprehen-  
 16 sive Investor Protection Act of 2002.”.

17 **SEC. 16. ANALYST CONFLICTS OF INTEREST.**

18 (a) STUDY AND REVIEW REQUIRED.—The Securities  
 19 and Exchange Commission shall conduct a study and re-  
 20 view of any final rules by any self-regulatory organization  
 21 registered with the Commission pursuant to section 19 of  
 22 the Securities Exchange Act of 1934 (15 U.S.C. 78s) re-  
 23 lated to matters involving equity research analysts con-  
 24 flicts of interest. Such study and report shall include a  
 25 review of the effectiveness of such final rules in addressing

1 matters relating to the objectivity and integrity of equity  
2 research analyst reports and recommendations.

3 (b) REPORT REQUIRED.—The Securities and Ex-  
4 change Commission shall submit a report to the Com-  
5 mittee on Financial Services of the House of Representa-  
6 tives and the Committee on Banking, Housing, and Urban  
7 Affairs of the Senate on such study and review no later  
8 than 180 days after any such final rules by any self-regu-  
9 latory organization registered with the Commission pursu-  
10 ant to section 19 of the Securities Exchange Act of 1934  
11 are approved by the Commission. Such report shall include  
12 recommendations to the Congress, including any rec-  
13 ommendations for additional self-regulatory organization  
14 rulemaking regarding matters involving equity research  
15 analysts. The Commission shall annually submit an up-  
16 date on such review.

17 (c) ADDITIONAL RULES REQUIRED.—Unless the  
18 final rules reviewed by the Commission under subsections  
19 (a) and (b) contain the following provisions, the Commis-  
20 sion shall, by rule—

21 (1) prohibit equity research analysts from—

22 (A) holding any beneficial interest in any  
23 equity security (as such term is defined in sec-  
24 tion 3(a)(11) of the Securities Exchange Act of



1           1934 (15 U.S.C. 78c(a)(11)) in any issuer cov-  
2           ered by such analyst; and

3                   (B) receiving compensation based on the  
4           investment banking revenues of the firm with  
5           which the analyst is associated, or on the in-  
6           vestment banking revenues of such firm and its  
7           affiliates, except that this prohibition shall not  
8           prohibit such an analyst from receiving com-  
9           pensation based on the overall revenues of such  
10          firm or of such firm and its affiliates; and

11          (2) require such self-regulatory organizations—

12                   (A) to establish criteria for evaluating ana-  
13          lyst research quality; and

14                   (B) to require analyst compensation to be  
15          based principally on the quality of the equity re-  
16          search analyst’s research.

17 **SEC. 17. DEFINITION OF SECURITIES LAWS.**

18          As used in this Act (including in any amendment  
19          made by this Act), the term “securities laws” means the  
20          Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securi-  
21          ties Exchange Act of 1934 (15 U.S.C. 78a et seq.), the  
22          Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.),  
23          the Investment Company Act of 1940 (15 U.S.C. 80a–  
24          1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C.  
25          80b et seq.), and the Securities Investor Protection Act

1 of 1970 (15 U.S.C. 78aaa et seq.), notwithstanding any  
2 contrary provision of any such Act.

○